

0156-2009US01

Customer No.: 27723

**REMARKS**

Claims 1-34 are currently pending in the application. By this amendment, independent claims 1 and 18 have been amended to further clarify the instant invention, and claims 3-4, 9-10, 12, 15, 17, 20-21, 26 and 32-34 have been amended for antecedent and dependency issues. No new matter has been entered.

Accordingly, reconsideration and withdrawal of the pending rejections are requested in view of the instant amendments and the accompanying remarks.

***Interview with Examiner Henry A. BENNETT***

Applicant wishes to thank Examiner BENNETT for his courtesy and cooperation during the interview conducted on May 2, 2006.

During the above-noted interview, Applicants' representative discussed the features of the present invention and the advantages thereof with respect to the prior art. Moreover, Applicants' representative discussed the references cited by the Examiner and pointed out the shortcomings thereof with respect to the features of the present invention.

In particular, in discussing PRELLER (U.S. Pat. No. 5,263,970) as cited and applied by the Examiner, Applicants' representatives suggested amending the independent claims in conjunction with the Examiner to further define Applicant's invention, noting the applied prior art did not teach each and every feature of the instant independent claims, as is proposed for amendment.

More specifically, the Examiner and Applicant's representative proposed amending Applicants' independent claims 1 and 18, so as to recite, *inter alia*:

"wherein the first component and the second component are separate and distinct;"

The Examiner responded positively to the above-noted proposed amendments (to the independent claims 1 and 18) indicating that the application would be in condition for allowance if the above-proposed amendments were made of record. The Examiner further noted that Applicant's Figures 1-3 clearly provided support for amending independent claims as discussed above. The Examiner indicated that he would place the instant Applicant's application into condition for allowance upon receiving the above-suggested

0156-2009US01

Customer No.: 27723

amendments when filed, noting that a junior examiner would further review the instant proposed amendment to continue prosecution.

***Amendment Fully Supported by the Original Disclosure***

The above amendments do not add new matter to the application and are fully supported by the specification. For example, support for amending independent claims 1 and 18 for adding, - wherein the first component and the second component are separate and distinct:-, is provided in figures 1-3 that clearly disclose the first and second components being separate distinct. Claims 3-4, 9-10, 12, 15, 17, 20-21, 26 and 32-34 have been amended merely for formal matters that included antecedent and dependency issues.

***Drawings***

As neither the Examiner nor the Patent Office Draftsperson has objected to the originally submitted drawings, Applicant understands that these drawings are acceptable.

***Rejection of claims is Believed Moot***

Applicant submits that, in view of the Examiner's interview (see above) and further view of the instant amendments to the claims in accordance with the Examiner's recommendations from the above Examiner interview that the §102 and §103 rejections of claims 1-34 should be rendered moot.

Accordingly, withdrawal of the rejections is respectfully requested.

***35 U.S.C. §102 Rejections***

Claims 1, 2 and 16 have been rejected under 35 U.S.C. § 102(b) as being anticipated by US Patent No. 5,263,970 issued to Preller (hereafter "PRELLER"). Applicant respectfully traverses this rejection for at least the following reasons.

Applicant respectfully points out that independent claim 1 recites a two-component device. For example, referring to independent claim 1, the two-component device comprises a first and a second component, recited in elements (a) and (b), respectively. Further, independent claim 1, as currently amended discloses *the first and second components being separate and distinct* from on another. Each component is applied

0156-2009US01

Customer No.: 27723

individually to either side of the wound or incision to be closed. Further still, PRELLER teaches a single, unitary device and, therefore, does not anticipate claims 1, 2 and 16.

Thus, PRELLER fails to provide any disclosure of the above-noted features at least recited in the independent claim 1, as currently amended.

Because PRELLER fails to disclose each and every recited feature of at least independent claim 1, Applicant submits that the Examiner has failed to provide an adequate evidentiary basis to support an anticipation rejection under 35 USC § 102(b). Therefore, the 102(b) rejection of claims 1-2 and 16 should be withdrawn.

Further, Applicant submit that claims 3-15 and 17 are allowable at least for the reason that these claims depend from allowable base claim and because these claims recite additional features that further define the present invention.

Accordingly, Applicant requests that the Examiner reconsider and withdraw the rejection of the claims 1-2 and 16 under 35 U.S.C. § 102 (b) and indicate that these claims are allowable.

### **35 U.S.C. §103 Rejections**

Claims 1-34 have been rejected under 35 USC 103(a) as being unpatentable over US Patent No. 6,329,564 issued to Lebner (hereafter "LEBNER") in view of PRELLER. The Examiner refers to page 4 of the Office Action, explaining that the features of Applicant's claimed invention have been disclosed in the above-cited LEBNER patent. The Examiner states further that:

"Lebner fails to explicitly teach that the first and second components are transparent. However, Preller teaches a wound closure device having at least semi-transparent first and second components in order to allow visualization of the wound during the closing process."

Contrary to the Examiner's interpretation, PRELLER does not teach *the first component and the second component are separate and distinct*, as at least recited in the independent claims as currently amended, but rather teaches a unitary device (see Figures 1-8). Applicant submits that the motivation specifically provided by PRELLER for the use of at least semitransparent material ("for rendering the wound visible through the dressing") is a requirement for the PRELLER device in that during the application process the wound

0156-2009US01

Customer No.: 27723

is not otherwise visible through the unitary device which completely blocks the wound from view. This requirement, and the underlying motivation, is inapplicable to Applicant's invention as the wound is visible between Applicant's two components - before, during and after the closing process. Thus, one of skill in the art faced with the problem of improving the LEBNER device would not look to, or be motivated by, the teaching of PRELLER. With respect to the ability to view the wound during the closure process, PRELLER represents non-analogous art. Applicant notes that this rejection has been addressed at the independent claim level and, therefore, the argument applies with equal weight to specifically stated grounds of rejection directed toward Applicant's dependent claims.

Thus, Applicant submits that the art record fails to disclose the requisite motivation or rationale for combining LEBNER and PRELLER in the manner asserted by the Examiner.

For these reasons, Applicant respectfully submits that independent claims 1 and 18 are allowable over any proper combination of LEBNER and PRELLER. Claims 2-17 and 19-34 are also allowable over LEBNER view of PRELLER because of their dependency from their respective allowable base claim 1 and 18. Withdrawal of the rejection of claims 1-34 is respectfully requested.

### ***Double Patenting Rejection***

Claims 1-34 have been provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over Claims 1, 3-19 and 21-36, respectively, of copending Application No. 10/626,783 ("the '783 application"). The Examiner specifically states that:

"It is clear that substantially all of the limitations of Claims 1-34 of the present invention are to be found in Claims 1, 3-19 and 21-36 of the '783 application. The only limitations not disclosed in Claims 1, 3-19 and 21-36 of the '783 application are "the first component being transparent" and "the second component being transparent"... However, Preller teaches a wound closure device having at least semi-transparent first and second components in order to allow visualization of the wound during the closing process."

As discussed above in connection with the rejection under 35 USC 103(a), the motivation specifically provided by PRELLER for the use of at least semitransparent

0156-2009US01

Custom r No.: 27723

material (i.e., "for rendering the wound visible through the dressing") is inapplicable to Applicant's invention as the wound is visible between Applicant's two components before, during and after the closing process. Thus, one of skill in the art faced with the problem of improving the LEBNER device would not look to, or be motivated by, the teaching of PRELLER. With respect to the ability to view the wound during the closure process, PRELLER represents non-analogous art. Applicant notes that this rejection has been addressed at the independent claim level and, therefore, the argument applies with equal weight to specifically stated grounds of rejection directed toward Applicant's dependent claims.

Withdrawal of the provisionally rejected claims 1-34 under the judicially-created doctrine of obviousness-type double patenting rejection is respectfully requested.

#### ***Amendment Proper for Entry***

Applicant submits that the instant amendment does not raise any new issues for consideration by the Examiner or any questions of new matter. Further, Applicant submits that, as the instant amendment places the claims into condition for allowance, entry and consideration of this amendment is proper and, therefore, requested.

#### **CONCLUSION**

In view of the foregoing, it is submitted that none of the references of record, either taken alone or in any proper combination thereof, anticipate or render obvious Applicant's invention, as recited in each of claims 1-34. The applied references of record have been discussed and distinguished, while significant claimed features of the present invention have been pointed out.

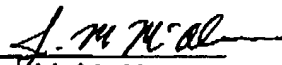
Further, any amendments to the claims which have been made in this response and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

0156-2009US01

Customer No.: 27723

Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate.

Respectfully submitted,  
Michael LEBNER

  
James M. McAleenan  
Reg. No. 56,820

May <sup>8</sup>~~2~~, 2006  
Pierce Atwood, LLP  
One New Hampshire Avenue, Suite 350  
Portsmouth, NH 03801  
603-373-2043